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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

RONALD KRILETICH,

Plaintiff and Appellant,

v.

**CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES,**

**Real Party in Interest and
Respondent.**

A133143

**(Alameda County
Super. Ct. No. RG 10534280)**

Ronald Kriletich (Kriletich) appeals from an order denying his motion to amend a judgment that had dismissed his petition for a writ of administrative mandate. He contends the court erred by not adding certain language to the judgment in order to confirm that the dismissal was with prejudice. We will affirm the order.¹

¹ This court has been advised that Kriletich died shortly before the date scheduled for oral argument in this appeal. He was not represented by appellate counsel. No one appeared on Kriletich's behalf at oral argument. The matter has been submitted. The issues raised in this appeal are not rendered moot by his death, because they affect his entitlement to benefits during his lifetime, in a monetary amount that would ultimately pass to his estate. Because we have not received any request for a substitution of parties in light of Kriletich's death (see Code Civ. Proc., §§ 375, 377.41; Cal. Rules of Court,

I. FACTS AND PROCEDURAL HISTORY

As Kriletich describes it, “[t]he main gist of this case evolves around the recent passage of California Welfare and Institutions Code § 14131.10, which has denied the appellant his federal right to both dental and acupuncture benefits under a federally funded program known as Medi-Cal.” The problem detected by the trial court, however, is that the administrative proceeding and order underlying his petition for administrative mandate had nothing to do with Welfare and Institutions Code section 14131.10. For this reason, the court dismissed his petition.

Although this appeal deals specifically with the adjudication of a motion Kriletich brought *after* the order of dismissal, a review of the entire proceedings will put the matter in context.

A. Alameda County’s Discontinuation of Eligibility for Benefits

By a Notice of Action dated May 20, 2009, Alameda County notified Kriletich that his Medi-Cal benefits would be discontinued on May 31, 2009, because he had failed to complete the redetermination process. The notice further stated that Kriletich could request a hearing if he disagreed with this action.

On July 6, 2009, Kriletich submitted a form to Alameda County, requesting a “hearing due to an action by the Welfare Department of Alameda County.” Kriletich alleged that he had hand-delivered the redetermination papers to the county and that the “Alameda County Medi-Cal Determination Supervisor” said his benefits would be reinstated. Kriletich added: “But since I still have not received my reinstatement confirmed in writing from Alameda County, this appeal will be filed to preserve my Medi-Cal rights and hoping further that I will get something in writing that my Medi-Cal rights were restored.”

By notice dated July 4, 2009, Alameda County informed Kriletich that it had received the information it needed and that his “Medi-Cal benefits will continue

rule 8.36(a)), we have retained the original title of the case. (See *Konig v. Fair Employment & Housing Com.* (2002) 28 Cal.4th 743, 745-746, fn. 3.)

unchanged.” (Respondent suggests that Kriletich did not get this notice before he submitted his hearing request to the county.)

B. California’s Elimination of Certain Medi-Cal Benefits

Around this same time in June 2009, respondent California Department of Health Care Services (DHCS) sent all Medi-Cal beneficiaries a “Notice of Reduction of Medi-Cal Benefits,” explaining that effective July 1, 2009, Medi-Cal would no longer pay for certain optional benefits and services, including dental and acupuncture services, pursuant to a change in Welfare and Institutions Code section 14131.10.

C. Administrative Hearing and Order

On August 24, 2009, an administrative hearing was held pursuant to Kriletich’s hearing request that complained of Alameda County’s discontinuation of his benefits for failure to complete the redetermination process. At the hearing, Kriletich did not dispute that Alameda County had since reinstated his Medi-Cal benefits.

The hearing did not address in substance the independent decision by the State of California to eliminate certain optional Medi-Cal benefits (including dental and acupuncture services) for *all* Medi-Cal recipients pursuant to Welfare and Institutions Code section 14131.10. Indeed, DHCS was not a party to the administrative proceeding.²

On September 8, 2009, Administrative Law Judge Betty O. Buccat dismissed Kriletich’s claim because, *inter alia*, Alameda County had already rescinded its Notice of Action and reinstated Kriletich’s eligibility for Medi-Cal benefits.

D. Kriletich’s Writ Petition in Superior Court

On September 1, 2010, Kriletich filed a petition for writ of administrative mandamus against Alameda County, naming DHCS as the real party in interest. (See Code Civ. Proc., § 1094.5.) Krilitech sought to compel Alameda County and DHCS to reinstate the dental and acupuncture benefits that DHCS had eliminated, purportedly in

² When Kriletich attempted to raise the issue of his acupuncture and dental benefits, the administrative law judge explained that the county deals only with *eligibility* issues, and if he wanted to address the issue of the availability of acupuncture or dental services, he would have to request a separate hearing with DHCS.

violation of federal law. He also sought a judicial declaration that the DHCS's notice under Welfare and Institutions Code section 14131.10 was unconstitutional. Kriletich alleged that he had fulfilled the conditions precedent to the filing of his writ petition by "having a hearing before an administrative law judge against respondent [Alameda County]." As discussed *ante*, however, that hearing was held pursuant to his challenge to the county's Notice of Action discontinuing his eligibility for benefits, and did not address DHCS' notice regarding termination of his dental and acupuncture benefits.

On December 3, 2010, the writ petition was dismissed as to Alameda County, in accord with the written stipulation of the parties, based on the understanding that the county had reinstated the benefits that the county had discontinued, it was DHCS who eliminated his dental and acupuncture benefits, and Alameda County agreed to follow federal law as interpreted by any final judicial decision in the case.

On December 6, 2010, DHCS filed a demurrer to Kriletich's petition. DHCS argued that the administrative proceeding that was the subject of his petition – the "final administrative order" he challenged – did not adjudicate the California Legislature's decision to eliminate optional Medi-Cal benefits (including dental and acupuncture benefits), but only Alameda County's termination of all of his benefits due to his failure to complete the redetermination form.

On February 24, 2011, the trial court (Judge Hunter) sustained DHCS's demurrer to the writ petition without leave to amend. Judge Hunter found that Kriletich's July 6, 2009 request for an administrative hearing "did not seek any determination as to the propriety of any decision by CDHCS to terminate dental or acupuncture benefits, or as to the constitutionality of Welfare and Institutions Code [§] 14131.10."

The court's order stated not only that the demurrer was sustained without leave to amend, but also that "[t]he entire Petition for Writ of Mandate is dismissed" and "[t]he entire action is DISMISSED." The order was signed by the court and served by the court clerk on February 24, 2011.

On March 10, 2011, DHCS filed and served Kriletich with a "Notice of Entry of Order Sustaining Demurrer Without Leave to Amend." The notice stated: "The court's

signed order dismissing this action constitutes judgment in this case,” citing Code of Civil Procedure section 581d.

On March 17, 2011, Kriletich filed in the superior court a “Notice and Motion to Amend a Judgment,” asking Judge Hunter to amend the judgment and order of dismissal to include the words “dismissal with prejudice” or “this action is dismissed with prejudice.” He stated the following as the grounds for the motion: “The said judgment does not contain any clause whatsoever that 1) fully fulfills the principles of res judicata that constitutes a final judgment, 2) constitutes a judgment on the merits thereby barring further litigation on the same subject matter between the parties to an end, and 3) collectively amounts to an appealable judgment by its failure to contain a clause fully stating that it was a ‘dismissal with prejudice’ OR that ‘this action is dismissed with prejudice’ CONSISTENT WITH the substance, terms, and conditions of higher court rulings that collectively point to the res-judicata-and-appealability of final judgments. In the absence of either two (2) clauses in the said judgment, the the [sic] dismissal assertion is ambiguous, open for interpretation, but devoid of the certainty element that would classify the said judgment as res judicata, a final determination on the merits, and collectively amount to an appealable judgment to a higher court BASED PRIMARILY on higher court rulings. In the absence of either two (2) said clauses in the final court ruling, the petitioner is subject to the probability of dismissal of his appeal EVEN BEFORE THE BRIEFING SCHEDULE EVEN BEGINS from the higher court officials due to the said ruling’s absence of either two (2) clauses that would otherwise classify the final ruling as res judicata, fully determined based on its merits, and fully appealable based on higher court rulings.”

On June 3, 2011, Judge Hunter denied Kriletich’s motion.

E. This Appeal

On June 30, 2011, Kriletich filed a notice of appeal from the “judgment/order dated and entered on 06/03/2011.”

II. DISCUSSION

We begin by clarifying the scope of this appeal and the appealability of the order denying Kriletich's motion to amend the judgment, and then turn to the merits.

A. No Appeal from Judgment or Order Sustaining Demurrer

As mentioned, Kriletich's notice of appeal seeks review of the "judgment/order dated and entered on 06/03/2011." Even if we could construe the notice of appeal broadly to include an appeal from the February 2010 order sustaining the demurrer and dismissing the petition, Kriletich insists in his reply brief that he does *not* appeal the order sustaining the demurrer. In his words: "At no time did the appellant ever want to appeal the order that sustained opposing counsel's demurrer."

Furthermore, Kriletich's notice of appeal was not filed within the time to appeal the order of dismissal. The order, which not only sustained the demurrer without leave to amend but also specified that the case was dismissed, constituted a final judgment of dismissal under Code of Civil Procedure section 581d. (Code Civ. Proc., § 581d [written order of dismissal, signed by the court, constitutes a judgment upon filing].) Notice of entry of this order and judgment was served by DHCS on March 10, 2011, and indeed, DHCS's notice warned that the order constituted a judgment under the statute. Kriletich's June 30, 2011 notice of appeal was not filed within 60 days after service of the notice of entry on March 10, 2011, and Kriletich does not argue that the time to appeal was extended by his filing of his motion to amend the judgment or for any other reason. The deadline to appeal the order sustaining the demurrer and dismissing his petition expired, and we have no jurisdiction to consider any challenge to it. (Cal. Rules of Court, rule 8.104(a)(2).)

We turn, therefore, to the June 2011 order denying Kriletich's motion to amend the judgment.

B. Appealability of Order Denying Motion to Amend Judgment

Generally, an appeal may be taken from an order that was issued after the entry of an appealable judgment (Code Civ. Proc., § 904.1, subd. (a)(2)), if the notice of appeal is

filed within 60 days after notice of the entry of the order (Cal. Rules of Court, rule 8.104(a)). Here, Kriletich's notice of appeal was filed well within 60 days after the order denying his "Motion to Amend a Judgment."

However, a postjudgment order cannot be appealed on issues that could have been reviewed on appeal from the prior judgment (e.g., whether Judge Hunter was correct in sustaining the demurrer and dismissing the petition). To allow such an appeal would either impermissibly give an appellant two appeals from the same judgment, or provide an unwarranted extension of time to appeal from the judgment itself. (*Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1576.)

Here, Kriletich appeals from the order denying his motion to amend the judgment on the ground that the judgment should specify more clearly that the dismissal was with prejudice. DHCS argues that Kriletich could have raised this issue in an appeal from the judgment itself.

While it is true that the omission of the "with prejudice" language is apparent from the face of the judgment, Kriletich's challenge is to the fact that the court refused to add the language *after* he brought the matter to the court's attention in his motion to amend the judgment. Courts appear split on the appealability of an order denying a motion to correct or amend a judgment. (See *Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1071 [order denying motion to amend judgment to add an alter ego judgment debtor was appealable]; *Wickware v. Tanner* (1997) 53 Cal.App.4th 570, 573-574 [order denying motion to modify judgment to include costs inadvertently omitted from the original cost memorandum was not appealable, because it did not enforce the judgment or stay its execution].) We will assume, for purposes of this appeal, that we have jurisdiction to review the court's denial of Kriletich's motion to amend the judgment.³

³ Kriletich argues the order is appealable based on a headnote in *Carver v. Platt* (1960) 179 Cal.App.2d 140, which states, "An order denying a motion under Code Civ. Proc., § 473, for relief from a judgment is appealable." (See *Carver, supra*, 179 Cal.App.2d at p. 142.) However, Kriletich's motion was not brought under Code of Civil Procedure section 473 and did not purport to meet its requirements. Although DHCS notes that an order denying a motion to vacate a judgment may be an appealable order,

We next decide whether that order was erroneous.

C. No Error in Denial Of Motion to Amend Judgment

Kriletich's motion to amend the judgment asked the court to add the words "dismissal with prejudice" or "this action is dismissed with prejudice," because without this language, in his view, the order sustaining the demurrer without leave to amend and dismissing the petition would not satisfy the requirements for res judicata and appealability.

Kriletich's motion had no merit. The statements by the court that "[t]he entire Petition for Writ of Mandate is dismissed" and "[t]he entire action is DISMISSED" *after the sustaining of a demurrer without leave to amend* is unquestionably sufficient to constitute a final judgment for purposes of res judicata and appealability. (Code Civ. Proc., § 581d.) Indeed, even when an order sustaining a demurrer without leave to amend does not mention "dismissal" *at all*, the order is usually deemed under recent case law to incorporate a final judgment of dismissal such that it can be immediately appealed. (*Estate of Dito* (2011) 198 Cal.App.4th 791, 799-800; *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 527-528, fn. 1; *Smith v. Hopland Band of Pomo Indians* (2002) 95 Cal.App.4th 1, 3, fn. 1.) And, while a voluntary dismissal without prejudice under Code of Civil Procedure section 581 may not have res judicata effect, a dismissal under Code of Civil Procedure section 581d, based on the sustaining of a general demurrer without leave to amend, does. (See *Keidatz v. Albany* (1952) 39 Cal.2d 826, 828 [order sustaining a general demurrer for failure to allege facts sufficient to state a cause of action, is a judgment on the merits for res judicata purposes].) The trial court did not err in denying Kriletich's motion to amend the judgment.

Kriletich insists in his reply brief that his motion to amend a judgment "never was AND still does not live up to a suggested deduction for a motion to vacate a judgment as opposing counsel tries to imply against the appellant." He adds: "Appellant's motion to amend a judgment MEANS EXACTLY WHAT IT MEANS – a motion to amend a judgment AND NOT a motion to vacate a judgment." We need not analyze the matter further in light of our conclusion that we have jurisdiction to review the order denying his motion to amend the judgment.

Even if Kriletich had been right and the court's language had been insufficient, Kriletich could not obtain relief by this appeal. If, as he contends, the absence of the "with prejudice" language meant there is no res judicata effect to the ruling against him, he would be *better* off than if it did have res judicata effect. Moreover, if, as he contends, the absence of the "with prejudice" language meant the judgment of dismissal was not appealable, then we would have no jurisdiction to entertain his appeal at all. (See Code Civ. Proc., § 904.1, subd. (a)(2) [appeal may be taken from post-judgment order only if the judgment is itself appealable].)

In conclusion, Kriletich has not appealed from the judgment of dismissal, his notice of appeal was not filed within the time to appeal from the judgment, and the court did not err in denying his motion to amend the judgment.

In reaching our conclusion, we have fully considered all of the matters discussed in Kriletich's opening brief and reply brief as well as the appellate record. Kriletich argues, among other things: federal laws invalidate contrary state laws; California may not ignore Medicaid law to suit its budgetary needs; the Notice of Action refers both to Alameda County and to the state, but no state representative appeared at the administrative hearing; Kriletich believes Judge Hunter's ruling on the demurrer was incorrect; respondent's counsel sent a copy of respondent's brief to an old address, even though Kriletich had served a change of address notice; Judge Buccat interrupted him repeatedly at the administrative hearing; Judge Buccat perpetrated sexual harassment against him because her written decision refers to him at times as "she"; Kriletich believed federal law would apply in this proceeding because of his stipulation that Alameda County could be dismissed from the case (upon its representation that it would follow federal law as interpreted by the court); Judge Hunter did not prove to him at the hearing that the words the court used in dismissing the action would satisfy the requirements for res judicata and appealability; and Kriletich showed Judge Hunter a calling card that the California Department of Justice could use to make long-distance calls at the price of one cent per minute as opposed to the \$75 that the department is

purportedly paying for a 30-minute call. We find none of Kriletich's arguments persuasive on any point material to the matter before us.

Kriletich fails to establish error by the trial court.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.